

## REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

This reply neither adds, changes, nor deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1-33 remain pending in this application.

Applicant believes that the present application is now in condition for allowance, but for the resolution of an interference. Favorable reconsideration of the application is respectfully requested.

## RESPONSE TO REJECTION

Claims 1-8, 14 and 16 stand provisionally rejected for obviousness-type double patenting over claims 1-11 of applicant's co-pending application 10/812,307. Applicant respectfully submits that the provisional rejection should be withdrawn under the provisions of MPEP 804(I)(B), because it is the only rejection remaining in this application.

According to the MPEP:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

MPEP § 804(I)(B)(1), pg. 800-17 (Eighth Ed., Rev. 3 Aug. 2005).

That is essentially the situation here. This 09/937,508 application was filed earlier than the co-pending 10/812,307 application. The only rejection remaining in this '508 application is the provisional obviousness-type double patenting rejection. The later-filed '307 application has had a claim rejected on other grounds (§112, 2<sup>d</sup>). Accordingly, the rejection in this earlier-filed '508 application should be withdrawn.

#### PERSONAL INTERVIEW

Applicant is grateful for the courtesies extended to applicant's representatives during the personal interview on February 8, 2006. Pending claims 20 & 23 and 25 & 28 were discussed in relation to claim 24 of U.S. Patent No. 6,702,483 (Tsuboi), with a view to suggesting an interference between that patent and this application; that formal suggestion will be submitted separately.

#### IDS

Accompanying this reply is an information disclosure statement listing, inter alia, the Tsuboi patent and the references cited on its face, and applicant's co-pending reissue application.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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